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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/382,275	08/25/1999	ROBERT A. VAN TASSEL	20220-311	5006

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EXAMINER

PHAN, HIEU

ART UNIT PAPER NUMBER

3738

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/382,275
Filing Date: ***
Appellant(s): VAN TASSEL ET AL.

MAILED

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Group 3700

Van Tassel et al.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 02/10/2005 appealing from the Office action mailed 08/11/2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 1, 2, 30, 43-45, 58-64, 73 and 82-87 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In regard to claim 1 and 58, the limitation the "stent body being otherwise substantially free of holes larger than said microholes" is considered new matter. Applicant's embodiment as depicted in Figure 1 includes a substantial number of diamond shaped holes, which are larger than the microholes, and the original disclosure lacks any description of an embodiment, which is substantially free of the holes larger than the microholes.

Art Unit: 3738

Applicant has failed to specifically point out the support in the original disclosure for each of the newly presented claim limitations (M.P.E.P. 714.02). Because of the procedure outlined in M.P.E.P. 2163.06 for interpreting the claims, it is noted that other art may be applicable under 35 U.S.C. 102 or 35 U.S.C. 103(a) once the aforementioned problem under 35 U.S.C. 112, first paragraph, is corrected.

(10) Response to Argument

In regard to Applicant's argument, Examiner disagrees with Applicant's contention that the Specification supports the limitation "stent body being otherwise substantially free of holes larger than said microholes".

Examiner direct Applicant to page 15, lines 8-15 in the Specification of the originally filed application. The passage in the specification only provides support for the microholes and does not support the limitation of "substantially free of holes larger than said microholes".

In figure 1 of the drawing, the stent (14) having a body with micrholes as indicated in the specification but the figure also show an open lattice stent structure with substantial amount of larger holes that is diamond shaped and the original disclosure lacks any description of an embodiment which is substantially free of the holes larger than the microholes.

In regard to figure 2, the specification only described a greatly enlarged cross-sectional view of a preferred material from which a stent "may also be fabricated from a composition of metallic fibers, uniformly laid to from a three dimensional, non-woven structure". Figure 2 does not illustrate a whole stent is made from metallic fibers that

forms microholes and excluding holes larger than the microholes but figure 2 only depicted in the drawing and described in the specification to show part of what a stent, such as a strut of a stent (14) in figure 1, may look like when it is enlarged.

After reviewing the specification and figures 1 and 2 of the drawings, Examiner believes that the limitation "stent body being otherwise substantially free of holes larger than said microholes" failed to comply with the written description requirement.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Hieu Phan

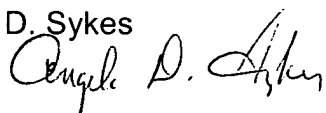


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